

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WARD T. EVANS,	§	
	§	No. 227, 2006
Defendant Below,	§	
Appellant,	§	Court Below--Superior Court
	§	of the State of Delaware, in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 88K01678DI
Appellee.	§	

Submitted: September 29, 2006

Decided: January 24, 2007

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

**ORDER**

This 24<sup>th</sup> day of January 2007, upon consideration of the parties' briefs and the Superior Court record, it appears to the Court that:

(1) After a Superior Court jury trial in 1982, the appellant, Ward T. Evans, was convicted of Rape in the First Degree and was sentenced to life in prison. On direct appeal this Court affirmed that final judgment.<sup>1</sup>

(2) In January 2004, the Superior Court denied Evans' *pro se* motion for correction of sentence. On appeal, this Court issued a final opinion ("2005

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<sup>1</sup>*Evans v. State*, 1984 Del. LEXIS 403 (Del. Supr.).

opinion”) that affirmed the Superior Court’s judgment.<sup>2</sup> The 2005 opinion also declared void recent legislation (“2004 legislation”) that had purported to invalidate this Court’s prior non-final opinion reversing the Superior Court’s judgment.<sup>3</sup>

(3) In 2006, Evans returned to the Superior Court, where he again filed a motion for correction of sentence as well as a motion for production of documents (collectively “2006 motions”). In a final judgment dated April 10, 2006, the Superior Court denied the 2006 motions. This appeal followed.

(4) In this appeal, Evans argues for the first time that the Superior Court judge who ruled on the 2006 motions should have entered a disqualification. According to Evans, the judge was disqualified from considering the 2006 motions because the judge’s father, a state senator, had voted in favor of the 2004 legislation.

(5) When a litigant files a timely motion for recusal and disqualification is not required per se, a judge is required to consider: first, whether he can hear the proceeding free from bias or prejudice; and second,

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<sup>2</sup>*Evans v. State*, 872 A.2d 539 (Del. 2005).

<sup>3</sup>*Id.*

whether there is an objective appearance of bias sufficient to cast doubt as to the judge's impartiality.<sup>4</sup>

(6) In this case, Evans did not file a motion for recusal in the Superior Court. Thus, Evans effectively foreclosed the judge from considering whether he could consider the 2006 motions free from bias or prejudice.<sup>5</sup> Under plain error review, however, we have considered whether there was an objective appearance of bias that cast doubt upon the judge's impartiality.<sup>6</sup>

(7) This Court has found no legal support for Evans' assertion that judicial disqualification is automatically required when a legislator and a judge are related within the third degree of consanguinity.<sup>7</sup> In Delaware, statutory enactments require the affirmative vote of both Houses of the General Assembly and the Governor's approval.<sup>8</sup>

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<sup>4</sup>*Los v. Los*, 595 A.2d 381, 384-85 (Del. 1991).

<sup>5</sup>*E.g., Stevenson v. State*, 782 A.2d 249, 257-58 (Del. 2001) (noting that timely recusal motion would have allowed for judge's consideration).

<sup>6</sup>Del. Supr. Ct. R. 8 (2007); *Simms v. State*, 2003 WL 23162424 (Del. Supr.) (citing *Stevenson v. State*, 709 A.2d 619, 635 (Del. 1998)).

<sup>7</sup>*See* Del. Judges' Code of Jud. Conduct, Canon 3C(1) (2007) (listing circumstances that require judicial disqualification).

<sup>8</sup>Del. Const. art. III, § 18 (Supp. 2006).

(8) The senatorial vote cast by the judge’s father on the 2004 legislation was not a reasonable basis upon which to question the judge’s impartiality in ruling on the 2006 motions. Accordingly, we hold that it was not error, plain or otherwise, for the judge to rule on the 2006 motions.

(9) Evans’ next two arguments concern our 2005 opinion.<sup>9</sup> First, Evans argues that the 2005 opinion violated the “single subject, single title” requirement of the Delaware Constitution.<sup>10</sup> Second, Evans argues that the interpretation of the applicable sentencing statutes in our 2005 opinion violated his right of due process.

(10) Evans’ argument, that the 2005 opinion violated the “single subject, single title” requirement of the Delaware Constitution, is without merit. Article II, section 16 acts as a limitation upon the power of the legislature not the judiciary, as Evans seems to argue.<sup>11</sup>

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<sup>9</sup>The Court notes that the arguments should have been raised in a motion for reargument of the 2005 opinion. *See* Del. Supr. Ct. R. 18 (2007) (governing motions for reargument). Nonetheless, the Court has considered the arguments on the merits.

<sup>10</sup>*See* Del. Const. art. II, § 16 (1974) (requiring that General Assembly title proposed legislation with sufficient particularity).

<sup>11</sup>*Id.* *See generally* *Turnbull v. Fink*, 668 A.2d 1370, 1382-83 (Del. 1995) (Holland, J., dissenting) (discussing historical context of article II, section 16 of Delaware Constitution).

(11) With regard to Evans' second argument, this Court concludes that there was no due process violation arising from its statutory interpretation in the 2005 opinion. Evans' argument, that the Court's statutory interpretation in the 2005 opinion was unforeseeable, is without merit.

(12) We now turn to Evans' issues arising from the denial of his motion for production of documents. Evans argues that he is entitled to the production of documents to amend a motion for new trial ("new trial motion") on the basis of newly discovered evidence. According to Evans, the new trial motion has been pending since January 2002, and he requests a remand instructing the Superior Court to rule on the new trial motion.

(13) The State agrees that the Superior Court has not ruled specifically on Evans' new trial motion. Nonetheless, the State argues that a remand for a ruling on the new trial motion is unnecessary because the salient issue presented in that motion was effectively adjudicated in 1987. The State's position is well taken. As the State correctly observes, the Superior Court considered and denied the merit of the new trial motion claim in 1987 when denying Evans' motion for postconviction relief.<sup>12</sup>

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<sup>12</sup>*State v. Evans*, Del. Super. Ct., Cr. A. No. IK82-03-0029, Ridgely, P.J. (Aug. 17, 1987), *aff'd*, 1987 WL 3287 (Del. Supr.) (affirming denial of postconviction relief).

NOW, THEREFORE, IT IS ORDERED that the judgment of the  
Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice